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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 160630574-7542-02]**

**RIN 0648-BG18**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Hogfish Management Measures in Amendment 43**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements management measures described in Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf) (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) (Amendment 43). This final rule revises the geographic range of the fishery management unit (FMU) for Gulf hogfish (the West Florida stock) consistent with the South Atlantic Fishery Management Council's (South Atlantic Council) boundary between the Florida Keys/East Florida and West Florida stocks, sets the annual catch limit (ACL) for the West Florida stock, increases the minimum size limit

for the West Florida stock, and removes the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area. This final rule also corrects a reference in the regulatory definition for charter vessel. The purpose of this final rule is to manage hogfish using the best scientific information available.

**DATES:** This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of Amendment 43 may be obtained from *www.regulations.gov*, or from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable\_fisheries/gulf\_fisheries/reef\_fish/2016/am43/index.html*. Amendment 43 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *peter.hood@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS and the Gulf Council manage the Gulf reef fish fishery, which includes hogfish, under the FMP. The FMP was prepared by the Gulf Council and is implemented by NMFS through regulations at 50 CFR part 622

under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On November 4, 2016, NMFS published a notice of availability for Amendment 43 and requested public comment (81 FR 76908, November 4, 2016). On November 23, 2016, NMFS published a proposed rule for Amendment 43 and requested public comment (81 FR 84538, November 23, 2016). The proposed rule and Amendment 43 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 43 and implemented by this final rule is provided below.

#### **Management Measures Contained in this Final Rule**

Amendment 43 and this final rule revise the hogfish FMU managed by the FMP to the West Florida hogfish stock, which includes hogfish in the Gulf exclusive economic zone (EEZ), except south of the 25°09' N. lat. line off the west coast of Florida; specify the ACL for the West Florida hogfish stock; increase the minimum size limit for the West Florida hogfish stock; and remove the powerhead exception for the harvest of hogfish in the Gulf reef fish stressed area.

*Fishery Management Unit*

Hogfish occur throughout the Gulf but are caught primarily off the Florida west coast. The most recent stock assessment for hogfish, the Southeast Data, Assessment, and Review 37 (SEDAR 37), divided the hogfish stock into three stocks based on genetic analysis as follows: the West Florida stock, the Florida Keys/East Florida stock, and the Georgia through North Carolina stock. The West Florida stock is completely within the jurisdiction of the Gulf Council and the Georgia through North Carolina stock is completely within the jurisdiction of the South Atlantic Council. The Florida Keys/East Florida stock crosses the two Councils' jurisdictional boundary, with a small portion of the stock extending into the Gulf Council's jurisdiction off the west coast of Florida. The West Florida stock is not overfished or undergoing overfishing, the Florida Keys/East Florida stock is overfished and experiencing overfishing, and the status of the Georgia through North Carolina stock is unknown.

The South Atlantic Council developed and submitted for review by the Secretary of Commerce (Secretary) a rebuilding plan for the Florida Keys/East Florida hogfish stock through Amendment 37 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment

37). In Amendment 43 and this final rule, the Gulf Council revises the hogfish FMU in the Gulf to be the West Florida stock, and defines the geographic range of this stock consistent with the South Atlantic Council's boundary between the Florida Keys/East Florida and West Florida hogfish stocks in Amendment 37. The Gulf Council will manage hogfish (the West Florida stock) in the Gulf EEZ except south of the 25°09' N. lat. line off the west coast of Florida, which is near Cape Sable. The South Atlantic Council will manage hogfish (the Florida Keys/East Florida stock) in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida, and in the South Atlantic EEZ to the state border of Florida and Georgia. The boundary line at 25°09' N. lat. off the west coast of Florida is currently used by the Florida Fish and Wildlife Conservation Commission (FWC) as a regulatory boundary for certain state-managed species. Using a pre-existing management boundary increases enforceability and helps fishermen comply with management measures by simplifying regulations across adjacent management jurisdictions.

In accordance with section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible

Council for management of the Florida Keys/East Florida hogfish stock in Gulf Federal waters south of the 25°09' N. lat. line off the west coast of Florida. On February 2, 2017, the Secretary approved Amendment 43 and the Gulf Council's request. The Secretary approved Amendment 37 on December 28, 2016, and NMFS is publishing a final rule implementing Amendment 37 in the same issue of the *Federal Register* as this final rule on [insert date of publication in the *Federal Register*]. Therefore, the Gulf Council continues to manage hogfish in Federal waters in the Gulf, except in Federal waters south of this boundary, and the South Atlantic Council establishes management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Gulf Federal waters south of 25°09' N. lat. off the west coast of Florida, which is near Cape Sable. All recreational anglers and federally permitted vessels must comply with the applicable management measures in the final rule implementing Amendment 37 when fishing for hogfish in Gulf Federal waters south of 25°09' N. lat. off the west coast of Florida.

Commercial vessels, charter vessels, and headboats fishing for hogfish in Gulf Federal waters, *i.e.*, north and west of the jurisdictional boundary between the Gulf and

South Atlantic Councils, as defined at 50 CFR 600.105(c), are still required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, *i.e.*, south and east of the jurisdictional boundary, are still required to have the appropriate Federal South Atlantic snapper-grouper permits. Those permit holders are still required to follow the sale and reporting requirements associated with the respective permits.

#### *Annual Catch Limit*

The SEDAR 37 stock assessment projections produced annual yields for the overfishing limit (OFL) and acceptable biological catch (ABC) level for the West Florida hogfish stock for the 2016 through 2026 fishing years. However, because of increasing uncertainty with long-range projections, the Gulf Council's Scientific and Statistical Committee (SSC) only provided OFL and ABC recommendations for the West Florida hogfish stock for the first 3 years, 2016 through 2018. The Gulf Council's SSC made constant catch OFL and ABC recommendations based on the averages of the 2016-2018 OFLs and ABCs. For 2019 and subsequent years, the SSC recommended an OFL and ABC set at the equilibrium yield levels.

This final rule sets the ACL for the West Florida hogfish stock based on the ABC recommendations made by the Gulf Council's SSC at 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years and at the equilibrium yield level of 159,300 lb (72,257 kg), round weight, in 2019 and subsequent fishing years. The Council decided to discontinue the designation of an annual catch target (ACT), because it is not used in the current accountability measures (AMs) or for other management purposes.

#### *Minimum Size Limit*

Although the West Florida hogfish stock is not overfished or undergoing overfishing, the stock could be subject to seasonal closures if landings exceed the stock ACL and AMs are triggered. This final rule increases the minimum size limit to harvest West Florida hogfish in Federal waters from 12 inches (30.5 cm), fork length (FL), to 14 inches (35.6 cm), FL, to reduce the directed harvest rate and reduce the probability of exceeding the ACL.

#### *Powerhead Exemption*

Since 2011, hogfish was the only Gulf species subject to the powerhead exemption, which was a regulatory holdover from when hogfish were previously listed in the regulations as a "species in the fishery but not in the reef fish



fishery management unit." This final rule removes the provision that exempted hogfish from the prohibition on the use of powerheads to take Gulf reef fish in the reef fish stressed area and, therefore, prohibits the harvest of hogfish with powerheads in the stressed area. By removing the powerhead exemption for hogfish, hogfish are subject to the same regulations for Gulf reef fish in the stressed area as other species in the reef fish FMU.

**Management Measures Contained in Amendment 43 but not Codified Through this Final Rule**

Amendment 43 also specifies additional status determination criteria (SDC) for the West Florida hogfish stock. The only SDC previously implemented for hogfish in the Gulf was the overfishing threshold, or maximum fishing mortality threshold (MFMT).

In Amendment 43, the Council selected the spawning potential ratio (SPR) as the basis for a maximum sustainable yield (MSY) proxy. Amendment 43 uses the equilibrium yield based on an overfishing threshold of the fishing mortality rate ( $F$ ) at 30 percent of the spawning potential ratio ( $F_{30\%SPR}$ ) as a proxy for MSY. This proxy is consistent with that used in SEDAR 37 and with the MSY proxy commonly used for reef fish species.

Both the hogfish MFMT and minimum stock size threshold (MSST) are based on this MSY proxy. The current MFMT value of  $F_{30\%SPR}$  for hogfish is already consistent with the MSY proxy and is not being changed in Amendment 43. In Amendment 43, the Gulf Council determined that setting the MSST at 75 percent of the spawning stock biomass (SSB) capable of producing an equilibrium yield when fished at  $F_{30\%SPR}$  ( $SSB_{30\%SPR}$ ) balanced the likelihood of declaring the stock as overfished as a result of natural variations in stock size with being able to allow the stock to recover quickly from an overfished state.

#### **Comments and Responses**

A total of 26 unique comments were received on the notice of availability and proposed rule for Amendment 43. Half of the comments (13 comments) were in favor of the proposed management measures for the West Florida stock. Some comments were outside the scope of Amendment 43 and the proposed rule; these included comments that proposed or discussed adding hogfish to the individual fishing quota program; creating regulations for spearguns to harvest reef fish; and creating a Florida Keys/East Florida and West Florida boundary for all reef fish species. Specific comments related to the actions in Amendment 43 and the

proposed rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* The single hogfish stock should not be split, because establishing three different stocks of hogfish with different regulations will lead to confusion when harvesting hogfish.

*Response:* NMFS disagrees that hogfish should continue to be managed as a single stock because the best scientific information available indicates that hogfish in the Gulf and South Atlantic are comprised of three separate stocks. As explained above, the 2014 hogfish stock assessment (SEDAR 37) divided the single hogfish stock in the southeast U.S. into three stocks based on genetic information. The Gulf and South Atlantic Councils' SSCs reviewed SEDAR 37 and agreed that there are three stocks of hogfish. Having different management measures for the West Florida stock and the Florida Keys/East Florida stock may cause some confusion for those who fish near the management boundary that separates the two stocks. However, different management measures are necessary because the status of these separate hogfish stocks is different. Of particular concern is the Florida Keys/East Florida stock, which is overfished and undergoing overfishing. Because only a small

portion of the Florida Keys/East Florida hogfish stock occurs in the Gulf Council's jurisdiction, the Gulf Council and the South Atlantic Council agreed that the South Atlantic Council would develop and implement measures to end overfishing of and rebuild the Florida Keys/East Florida stock.

*Comment 2:* It is unclear which permits apply when harvesting Florida Keys/East Florida hogfish and how the different regulations apply when fishing for hogfish in different management areas.

*Response:* As explained in the proposed rule and in the preamble above, vessels fishing for hogfish in Gulf Federal waters (north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils, as defined at 50 CFR 600.105(c)), are still required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters (south and east of the jurisdictional boundary) are still be required to have the appropriate Federal South Atlantic snapper-grouper permits. For example, if a commercial vessel, charter vessel, or headboat is fishing for hogfish at Pulley Ridge, which is in Federal waters of the Gulf off the west coast of Florida and south of 25°09' N. lat., the

vessel is required to possess the applicable Federal Gulf commercial or charter vessel/headboat permit to harvest hogfish. Federal permit holders will continue to be required to follow the existing sale and logbook reporting requirements associated with the respective permits. Maintaining existing permitting requirements minimizes confusion and avoids unnecessarily burdening those fishing for hogfish under Federal permits, while still meeting both Councils' management needs. This final rule includes additional language in 50 CFR 622.20 to clarify that the applicable Gulf Federal permits are required when harvesting Florida Keys/East Florida hogfish in the Gulf EEZ.

Fishermen must adhere to the regulations in place for the area in which they are fishing. If fishing for hogfish in Federal waters off the west coast of Florida and north of 25°09' N. lat., then the Gulf regulations for the West Florida stock apply. If fishing in Federal waters off the west coast of Florida and south of 25°09' N. lat., then the South Atlantic regulations for the Florida Keys/East Florida hogfish stock apply. Fishermen fishing for hogfish both north and south of 25°09' N. lat. during the same trip, must ensure they are in compliance with the

applicable regulations as they move from one area to another. Similarly, fishermen transiting through an area must follow the hogfish regulations that apply in that area, regardless of where the hogfish were harvested.

*Comment 3:* It is not clear why the ACL for the West Florida hogfish stock decreases from 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years to 159,300 lb (72,257 kg), round weight, in the 2019 fishing year, when the stock is not overfished or undergoing overfishing. It is also not clear whether the decrease in the ACL will allow the fishery to continue to achieve optimum yield.

*Response:* The West Florida stock ACL decreases in 2019 based on the information provided in SEDAR 37 and the ABC recommendations provided by the Gulf Council's SSC. The results of SEDAR 37 indicate that the biomass of the West Florida hogfish stock is currently above the level needed to maintain MSY, and can therefore support higher catch levels in the short-term, but then need to decrease over time. The ABC recommendations provided by the Gulf Council's SSC addressed the uncertainty associated with long-range projections by providing a higher constant ABC recommendation through the 2018 fishing year (219,000 lb

(99,337 kg), round weight), and a lower long-term constant ABC for the following fishing years if no new assessment has been completed (159,300 lb (72,257 kg), round weight). The Gulf Council set the ACLs equal to the ABCs recommended by the SSC, and requested a hogfish stock assessment update in 2018 to reassess the long-term catch recommendations. By setting the catch levels equal to the ABCs, the Council has allowed for the highest yield possible under the current understanding of the stock status and the future projections. The lower ABC and catch level in 2019 and in subsequent fishing years is a precautionary measure to help ensure long-term sustainable catch levels if a new stock assessment is not completed as scheduled.

*Comment 4:* Because of more restrictive management measures proposed for the Florida Keys/East Florida hogfish stock, fishing effort may shift to the West Florida hogfish stock.

*Response:* It is difficult to predict if fishermen will shift their effort from one stock to the other. However, if fishermen direct additional effort toward the West Florida hogfish stock, this stock has an ACL and an AM to prevent overfishing and to protect this stock from becoming overfished. The AM for West Florida hogfish stock is

triggered if the sum of commercial and recreational landings exceed the ACL during a fishing year. Once the AM is triggered, then during the following fishing year, the commercial and recreational sectors will be closed to fishing if the sum of commercial and recreational hogfish landings reaches or is projected to reach the ACL. The Gulf Council also increased the minimum size limit from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL, which is expected to slow the rate of harvest and reduce the likelihood of a closure as the result of reaching the ACL.

*Comment 5:* Some commenters questioned the need to change the minimum size limit for the West Florida stock from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL, given that the stock is not overfished or undergoing overfishing. Another commenter suggested that the final rule should increase the minimum size limit to 16 inches (40.6 cm), FL, to protect male hogfish, and fishing should be closed when hogfish are spawning to protect the West Florida stock. This commenter also stated that Amendment 43 should discuss the size when hogfish transition from females to males and discuss a closed spawning season for hogfish.



*Response:* The Gulf Council decided to raise the minimum size limit to 14 inches (35.6 cm), FL, because this is expected to reduce the harvest rates by the commercial and recreational sectors, and therefore, reduce the likelihood of a closure as the result of reaching the ACL. This minimum size limit increase will also allow hogfish to grow larger and have additional spawning opportunities before they can be harvested and landed.

NMFS disagrees that the minimum size limit should be increased to 16 inches (40.6 cm), FL, and that there should be a closure when hogfish are spawning. The Gulf Council evaluated a 16-inch (40.6-cm), FL, minimum size limit but for the reasons stated above decided to increase the minimum size limit from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL. Amendment 43 notes that the size of female maturity (estimated size at 50 percent maturity) occurs at between 6 and 7.5 inches (15.2 and 19.1 cm), FL, and the size of male transition (estimated size at 50 percent having transitioned to males) occurs at 16.6 inches (42.2 cm), FL. Raising the minimum size limit to 16 inches (40.6 cm), FL, would further reduce the harvest rate and allow more hogfish to transition to males. However, this option was not supported by the Gulf Council's Reef Fish

Advisory Panel, and during public hearings several fishermen testified that moving to a 16-inch (40.6 cm), FL, size limit was too great a change and would lead to large numbers of discards. The Council determined, and NMFS agrees, that because the West Florida stock is healthy, it is unnecessary to increase the minimum size limit to 16 inches (40.6 cm), FL.

Amendment 43 also discusses the hogfish spawning season (December through April); however, the Gulf Council did not consider a seasonal closure to protect spawning fish because the West Florida stock is neither overfished nor undergoing overfishing. The measures implemented by this final rule are expected to prevent overfishing but also allow a year-round fishing season for the West Florida stock of hogfish, which will benefit fishermen.

*Comment 6:* The actual MSY value for the West Florida hogfish stock should be used rather than a proxy.

*Response:* The decision on whether to use MSY or a proxy, such as the yield at  $F_{30\%SPR}$ , is made during the stock assessment process and subsequent review. This decision is based on the type of assessment model and the confidence the assessment scientists have in factors such as recruitment. Using proxies when MSY is not known or when

confidence in the estimate of MSY is uncertain is a common practice. In Amendment 43, the Council considered using the point estimate of MSY from the assessment, but chose to use the proxy instead because of uncertainty in the MSY estimates caused by the lack of a discernable relationship between the stock biomass and recruitment. The Gulf Council's decision is consistent with the SSC's ABC recommendations, which are based on this proxy.

*Comment 7:* Discards need to be accounted for in setting the ACLs.

*Response:* Discard mortality rates were accounted for in the SEDAR 37 stock assessment, resultant stock projections, and calculations of the ACLs. Different discard mortality rates were developed for the various sectors and components of the Gulf reef fish fishery (e.g., commercial and recreational, spearfishing, and hook-and-line). However, in SEDAR 37, discards were not considered a major source of mortality for hogfish. As discussed in Amendment 43, SEDAR 37 set the discard mortality rate at 100 percent for spearfishing, but because this gear type uses line-of-sight in harvesting fish, the number of regulatory discards was considered to be low. Therefore, hogfish harvested by spearfishing is predominantly counted

as catch. Hook-and-line gear catches considerably fewer hogfish than spearfishing, and the discard mortality rate for hogfish attributed to hook-and-line gear was estimated at 10 percent, which was considered low.

*Comment 8:* Other than the increase in the minimum size limit, no other action for hogfish should be taken. There should be no closed season, reduction in the recreational bag limit, or establishment of a commercial trip limit.

*Response:* This final rule does not create or revise a closed season, reduce the recreational bag limit, or set a commercial trip limit for the West Florida hogfish stock. In Amendment 37, the South Atlantic Council established a closed season for the Florida Keys/East Florida hogfish stock and, for both the Florida Keys/East Florida and Georgia through North Carolina hogfish stocks, the South Atlantic Council reduced the recreational bag limit, increased in the minimum size limits, and established commercial trip limits. These actions are discussed in Amendment 37

([http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg/2015/am37/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/am37/index.html)), its associated proposed rule (81 FR 91104, December 16, 2016), and its associated final rule published in the same issue of the *Federal Register* as this

final rule on [insert date of publication in the Federal Register].

*Comment 9:* It is unclear how eliminating the powerhead exemption for hogfish in the Gulf reef fish stressed area will help the West Florida hogfish stock and if there is any reason for eliminating this exemption other than making the regulations the same for all Gulf reef fish species.

*Response:* As discussed in Amendment 43, removing the exemption for allowing the harvest of hogfish using powerheads is likely to have a minimal impact on the West Florida hogfish stock, as it will only affect spearfishing for this species in the Gulf reef fish stressed area, defined at 50 CFR 622.35(a). Additionally, powerheads are typically not used to harvest hogfish. The primary purpose of this action is to remove an exemption that should have been removed when hogfish was originally included in the reef fish FMU. However, this action may also improve enforcement by applying the powerhead prohibition to all reef fish in the Gulf reef fish stressed area.

**Additional Change to Codified Text not in Amendment 43**

In 2013, NMFS reorganized the regulations in 50 CFR part 622 to improve the organization of the regulations and make them easier to use (78 FR 57534, September 19, 2013).

However, during that reorganization, a regulatory reference in the definition of "charter vessel" in § 622.2 was inadvertently not updated as needed. The charter vessel definition previously included a reference to § 622.4(a)(2) as the provision that specifies the required commercial permits under the various fishery management plans. Although § 622.4(a)(2) addressed all of the required commercial permits before the 2013 reorganization, after the reorganization that provision referred to operator permits only. The reorganization of the regulations removed the various commercial permit provisions from § 622.4 and placed them in the appropriate subparts throughout part 622. This final rule updates the regulatory reference in the definition of charter vessel in § 622.2 to refer to any commercial permits "as required under this part." This update in language makes the regulatory reference in the definition of charter vessel consistent with the current regulatory definition of headboat in § 622.2.

### **Classification**

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. Amendment 43 and the preamble to this final rule provide a statement of the need for and objectives of this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. No new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

No significant economic issues were raised by public comment, and therefore, no changes to this final rule were made in response to public comments of an economic nature. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Gulf Council's preferred alternatives will best achieve their objectives for Amendment 43 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect all

vessels with a Federal commercial permit for Gulf reef fish that harvest hogfish. A Federal Gulf commercial reef fish permit is required for commercial vessels to harvest reef fish species, including hogfish, in the Gulf EEZ. Over the period of 2010 through 2014, the number of vessels that recorded commercial harvests of hogfish in the Gulf EEZ ranged from 55 in 2010 to 75 in 2014, or an average of 61 vessels per year, based on mandatory Federal logbook data. The average annual revenue per vessel from the harvest of all finfish species during this period by these vessels was approximately \$35,600 (this estimate and all subsequent monetary estimates in this analysis are in 2014 dollars), of which approximately \$2,200 was derived from the harvest of hogfish.

NMFS has not identified any other small entities that might be directly affected by this final rule. Although recreational anglers would be directly affected by the actions in this final rule, recreational anglers are not small entities under the RFA. The actions in this final rule will not directly apply to or change the operation of the charter vessel and headboat (for-hire) component of the recreational sector or the service this component provides, which is providing a platform to fish for and retain those



fish that are caught within legal allowances. Although angler demand for for-hire services could be affected by the management changes in this final rule, the resultant effects on for-hire businesses would be indirect consequences of this final rule. Indirect effects are outside the scope of the RFA.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this final rule are believed to be small business entities.

This final rule contains four actions specific to the management of the West Florida hogfish stock in the Gulf: defining the hogfish FMU, establishing the stock ACL, setting the minimum size limit, and prohibiting the harvest of hogfish with powerheads in the Gulf reef fish stressed area. Two of these actions, defining the FMU and

prohibiting the use of powerheads, are not expected to have any direct economic effects on any small entities.

Defining the FMU is an administrative action that forms the platform from which subsequent regulations, such as the ACL and minimum size limit, are based. Although direct economic effects may result from the implementation of these management measures for a newly defined FMU, these effects would be indirect consequences of defining the FMU.

NMFS notes that the establishment of the West Florida hogfish stock boundary would result in the extension of South Atlantic hogfish management measures for the Florida Keys/East Florida hogfish stock into Gulf Federal waters south of the 25°09' N. lat. line off the west coast of Florida. As a result, vessels with Federal Gulf commercial reef fish permits may experience direct negative economic effects due to the more restrictive hogfish management measures imposed by the South Atlantic Council in the area between the Gulf and South Atlantic Council jurisdictional boundary and the West Florida hogfish stock boundary line at 25°09' N. lat. off the west coast of Florida. These direct negative economic effects, which are discussed in the final rule implementing South Atlantic Amendment 37 published in the same issue of the *Federal Register* on

[insert date of publication in the Federal Register], would also be an indirect consequence of defining the FMU.

As explained in the final rule implementing Amendment 37, the data used to assign landings to stock areas and monitor the ACL do not have the spatial resolution to estimate the specific fishing activity that occurs in the area between the Councils' jurisdictional boundary and the new Florida Keys/East Florida hogfish stock boundary at the 25°09' N. lat. line off the west coast of Florida. Therefore, the analysis conducted for Amendment 37, and summarized in the Amendment 37 final rule, used commercial landings data exclusive to Federal waters of the South Atlantic off the State of Florida as a proxy for commercial landings in the new Florida Keys/East Florida stock area (including the area in the Gulf EEZ). Based on the relatively small size of the area between the Councils' jurisdictional boundary and the new Florida Keys/East Florida hogfish stock boundary at the 25°09' N. lat. line off the west coast of Florida, as well as the public comments received and South Atlantic Council discussions, NMFS expects commercial hogfish landings from this area in the Gulf EEZ to be below the level that would change any of the assumptions or conclusions in the analysis provided in

Amendment 37 and the corresponding final rule.

Prohibiting the use of powerheads to harvest hogfish is not expected to directly affect any small entities because powerheads are not expected to be used to harvest hogfish. The use of powerheads for the harvest of other reef fish species in these areas is currently prohibited and, because of the small size of hogfish, powerheads would be expected to result in excessive damage to the fish and adversely affect its market quality. Thus, NMFS does not expect that any hogfish in the Gulf reef fish stressed area are commercially harvested using powerheads, and the prohibition on the use of powerheads to harvest hogfish is not expected to reduce revenue to any commercial fishermen.

The changes in the West Florida hogfish stock ACL and minimum size limit have independent and interactive effects. The changes in the West Florida hogfish stock ACL are expected to increase total commercial fishing revenue for all vessels during the 2016 through 2018 fishing years by approximately \$8,900 per year, followed by a decrease in revenue of approximately \$39,300 in 2019, and annually thereafter, until the stock ACL (or other hogfish management aspect) is changed. The revised minimum size limit is expected to reduce commercial harvest by 17

percent averaged over the fishing year and across gear types, resulting in a decrease in commercial revenue each year if vessels are unable to compensate for the reduced harvest of hogfish through increased harvest of other species. Independent of the changes in the West Florida hogfish stock ACL, the increase in the minimum size limit is expected to decrease total commercial revenue for all vessels by approximately \$28,500 per year.

In combination, the revisions to the West Florida hogfish stock ACL and minimum size limit are expected to decrease total commercial revenue for all vessels by approximately \$21,100 per year for 2016 through 2018, and approximately \$61,100 in 2019, and each year thereafter, until the stock ACL (or other management aspect) is changed. As previously stated, these projected reductions in fishing revenue assume commercial fishermen are unable to benefit from the full increase in the ACL due to the increase in the minimum size limit, or compensate for the effects of the larger minimum size limit on their normal harvests (*i.e.*, pre-ACL increase). Averaged across the number of small business entities expected to be directly affected by this action (55-75 entities, or an average of 61 entities per year), the reduction in fishing revenue per

vessel each year for 2016 through 2018 is expected to range from \$282 (75 entities) to \$384 (55 entities) per year, or an average of \$347 (61 entities) per year. For 2019, and thereafter, the average reduction in revenue per vessel is expected to range from \$814 (75 entities) to \$1,111 (55 entities) per year, or an average of \$1,001 (61 entities) per year.

Compared to the average annual revenue per vessel from all commercial fishing (approximately \$35,600), the expected reduction in revenue per vessel per year as a result of the changes in the West Florida hogfish stock ACL and minimum size limit is expected to be approximately one percent of average annual total fishing revenue for 2016 through 2018. For 2019, and thereafter, the average reduction in annual revenue per vessel is expected to be approximately three percent of average annual total revenue.

In conjunction with the changes to the ACL for the West Florida hogfish stock, this final rule eliminates the ACT (*i.e.*, a hogfish ACT is not defined). Although this final rule does not define an ACT for West Florida hogfish, the ACT is not currently used as a fishing restraint and would not trigger AMs, and does not affect the harvest of

hogfish, or associated revenue, in the Gulf. As a result, not defining an ACT for the West Florida hogfish stock is not expected to have any economic effects on any small entities.

In addition to the four actions that relate to the management of hogfish in the Gulf, this final rule makes a minor revision to the definition of a charter vessel. A regulatory reference within the definition of charter vessel was inadvertently not updated when the regulations at 50 CFR part 622 were reorganized in 2013 (78 FR 57534, September 19, 2013). The revision made in this final rule is editorial in nature and is not expected to have any direct effect on any small entities.

The following discussion describes the alternatives considered in Amendment 43 that were not selected as preferred by the Council.

Because the actions to define the Gulf hogfish FMU, specify the SDC for the West Florida hogfish stock, prohibit the use of powerheads to harvest hogfish in the Gulf reef fish stressed area, and revise the definition of charter vessel are not expected to have any direct adverse economic effects on any small entities, the issue of significant alternatives is not relevant.

Four alternatives, including no action, were considered for the action to set the West Florida hogfish stock ACL. Each of these alternatives included options on whether to set an ACT for the West Florida hogfish stock, and the option selected by the Council was to not set an ACT. As previously discussed, the ACT did not restrict harvest or trigger AMs. Thus, not defining an ACT is not expected to have any direct economic effects, and the issue of significant alternatives (or options) is not relevant.

The first alternative (no action) to the ACLs for the West Florida hogfish stock established by this final rule would have resulted in less revenue to commercial fishermen in 2016 through 2018, and more revenue in 2019 and thereafter than the proposed change. Cumulatively (2016 through 2019 and thereafter), this alternative would have resulted in more commercial fishing revenue than the ACLs in this final rule. However, this alternative was not selected by the Council because it would not enable the increase in stock ACL for the West Florida hogfish stock resulting from SEDAR 37. Under this final rule, the ACL in 2019 will be substantially reduced from the ACL in the 2017 and 2018 fishing years if a new hogfish assessment is not completed prior to 2019 and new ACLs are not implemented.



This may suggest the "no action" ACL would be preferable to the ACLs established by this final rule. However, retaining the "no action" ACL in 2019 and beyond would be inconsistent with the ABC recommendations provided by the Gulf Council's SSC. In addition, the Gulf Council expects a new hogfish stock assessment to be completed in sufficient time to avoid the scheduled reduction to the ACL beginning in the 2019 fishing year.

The second alternative to the ACLs for the West Florida hogfish stock established by this final rule would set the ACL higher in 2016, and reduce it thereafter, until it reached the lowest level in 2019. This alternative would be expected to result in increased commercial fishing revenue in 2016, decreased revenue in 2017 and 2018, and the same revenue in 2019, and thereafter, compared to the ACLs established by this final rule. This alternative was not adopted by the Gulf Council because it would require successive reductions in the ACL in 2017 and 2018 (after the initial increase in 2016), in addition to the reduction in 2019, common to both this alternative and the ACL established by this final rule. The Gulf Council determined that employing a constant ACL for the 2016 through 2018 fishing years would result in greater economic stability

for affected fishermen and associated businesses.

Finally, the fourth alternative to the ACLs for the West Florida hogfish stock established by this final rule would set the ACL at the lowest level of these alternatives, resulting in less revenue in 2016 through 2018, and the same revenue in 2019 and thereafter, compared to the ACLs established by this final rule. This alternative was not selected because it would unnecessarily limit hogfish harvest and cause greater economic losses than the ACLs established by this final rule.

Four alternatives, including no action, were considered for the action to change the hogfish minimum size limit. The Gulf Council determined that slowing the hogfish directed harvest rate was prudent to reduce the likelihood that the ACL is exceeded, thus triggering AMs. Exceeding the ACL may require an AM-based closure in the following year, and the Council determined that a closure is more economically harmful than reducing the harvest rate to help ensure a longer open season. Therefore, to reduce the harvest rate, the Gulf Council decided to increase the hogfish minimum size limit.

The first alternative (no action) to the minimum size limit in this final rule would not change the minimum size

limit, would not reduce the harvest rate, and would not achieve the Gulf Council's objective. Two other minimum size limits were considered in Amendment 43, each of which are greater than the current minimum size limit and the minimum size limit in this final rule. Because these alternatives would result in a greater minimum size limit than the Gulf Council's selection, each would be expected to result in greater reductions in hogfish harvest and associated revenue. These alternatives were not adopted because the Gulf Council concluded that the resultant reductions in the hogfish harvest rate would be greater than necessary, and would result in excessive adverse economic effects on fishermen and associated businesses.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

### **Changes to Codified Text from the Proposed Rule**

In response to public comment, NMFS includes additional language in part 622 regulations to clarify which Federal permits apply when harvesting Florida Keys/East Florida hogfish in the Gulf EEZ. This final rule adds a definition for "Florida Keys/East Florida hogfish", and modifies the language in section 622.20 to clarify that Gulf Federal permits are required for commercial vessels, charter vessels, and headboats to harvest Florida Keys/East Florida hogfish in the Gulf EEZ.

### **List of Subjects in 50 CFR Part 622**

Commercial, Fisheries, Fishing, Gulf of Mexico, Hogfish, Recreational, South Atlantic.

Dated: July 19, 2017.

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Chris Oliver,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.1, revise the Table 1 entry for "FMP for the Reef Fish Resources of the Gulf of Mexico", and add footnote 7 to Table 1 to read as follows:

**§ 622.1 Purpose and scope.**

\* \* \* \* \*

**Table 1 to § 622.1--FMPs Implemented Under Part 622**

FMP title	Responsible fishery management council(s)	Geographical area
* * * * *		
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf. <sup>1 3 4 7</sup>
* * * * *		

<sup>1</sup> Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

\* \* \* \* \*

<sup>3</sup> Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

<sup>4</sup> Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

\* \* \* \* \*

<sup>7</sup> Hogfish are managed by the FMP in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida are managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region.

3. In § 622.2, revise the first two sentences in the definition of *Charter vessel* and add the definition for *Florida Keys/East Florida hogfish* in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Charter vessel* means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages

in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under this part, is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish or South Atlantic snapper-grouper. \* \* \*

\* \* \* \* \*

*Florida Keys/East Florida hogfish* means hogfish occurring in the Gulf EEZ from 25°09' N. lat. off the west coast of Florida and south to the jurisdictional boundary between the Gulf and South Atlantic Councils, as defined at 50 CFR 600.105(c), and continuing in the South Atlantic EEZ from the jurisdictional boundary between the Gulf and South Atlantic Councils to the state boundary between Florida and Georgia.

\* \* \* \* \*

4. In § 622.20, revise paragraphs (a)(1) introductory text and (b) introductory text to read as follows:

**§ 622.20 Permits and endorsements.**

(a) *Commercial vessels*--(1) *Commercial vessel permits*.

For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.39, or to sell Gulf reef fish or Florida Keys/East Florida hogfish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A or B of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(1)(i) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish. See §§ 622.21(b)(1) and 622.22(b)(1), respectively, regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes, and paragraph (a)(2) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf.

\* \* \* \* \*

(b) *Charter vessel/headboat permits.* For a person



aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Gulf reef fish, in or from the EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board. For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Florida Keys/East Florida hogfish in or from the Gulf EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board.

\* \* \* \* \*

5. In § 622.34, add paragraph (g) to read as follows:

**§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.**

\* \* \* \* \*

(g) *Recreational sector for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida. See § 622.183(b)(4) for the applicable seasonal closures.*

6. In § 622.35, revise paragraph (a)(1) to read as follows:

**§ 622.35 Gear restricted areas.**

(a) \* \* \*

(1) A powerhead may not be used in the stressed area

to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

\* \* \* \* \*

7. In § 622.37, revise paragraph (c) (2) to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

(c) \* \* \*

(2) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida--14 inches (40.6 cm), fork length. See § 622.185(c) (3) (ii) for the hogfish size limit in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.*

\* \* \* \* \*

8. In § 622.38, revise paragraph (b) (7) to read as follows:

**§ 622.38 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(7) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida*--5. See § 622.187(b) (3) (ii) for the hogfish bag and possession limits in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

\* \* \* \* \*

9. In § 622.41, revise paragraph (p) to read as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(p) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. For the 2016 through 2018 fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west

coast of Florida is 219,000 lb (99,337 kg), round weight. For the 2019 and subsequent fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida is 159,300 lb (72,257 kg), round weight. See § 622.193(u)(2) for the ACLs, ACT, and AMs for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

\* \* \* \* \*

10. In § 622.43, add paragraph (c) to read as follows:

**§ 622.43 Commercial trip limits.**

\* \* \* \* \*

(c) *Hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida--see § 622.191(a)(12)(ii) for the commercial trip limit.*

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